

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JORGE LEAL MUNOZ,

Defendant.

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**Case No. 05-CR-147-TCK
(07-CV-114-TCK-FHM)**

OPINION AND ORDER

By Opinion and Order filed September 20, 2010 (Dkt. # 54), the Court denied the 28 U.S.C. § 2255 motion filed by Defendant Jorge Leal Munoz on all grounds except his claim of ineffective assistance of counsel for failure to file a notice of appeal. That claim was referred to the United States Magistrate Judge for an evidentiary hearing. See Dkt. # 54. On September 22, 2010, attorney William Lunn entered his appearance on behalf of Defendant. The evidentiary hearing was conducted on December 13, 2010. See Dkt. # 65. On December 22, 2010, the Magistrate Judge entered his Report and Recommendation (the “Report”) (Dkt. # 67), finding that Defendant did not request his attorney, Paul Brunton, to file a notice of appeal. On January 4, 2011, Defendant filed a notice of his “decision not to appeal and desire to return to the penitentiary to serve out his sentence” (Dkt. # 68). Also before the Court is Defendant’s motion to reconsider (Dkt. # 66) the Court’s prior ruling that Defendant’s guilty plea was knowingly and intelligently entered.

The Court has reviewed the Report and, in light of Defendant’s decision not to file an objection and in accordance with Rule 8(b) of the Rules Governing Section 2255 Cases and 28 U.S.C. § 636(b)(1)(C), concludes that the Report shall be accepted. Defendant is not entitled to relief on his claim of ineffective assistance of counsel for failing to file a notice of appeal. The Court has also reviewed the prior Opinion and Order as well as the arguments asserted in Defendant’s motion

to reconsider and finds no clear error warranting reconsideration of the conclusions contained in the Opinion and Order. Therefore, Defendant's motion to reconsider shall be denied. Lastly, having previously considered and rejected each of the claims raised in the 28 U.S.C. § 2255, with the exception of the ineffective assistance of counsel claim considered and rejected above based on the findings by the Magistrate Judge in the Report, the Court finds Defendant's 28 U.S.C. § 2255 motion shall be denied in its entirety.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. The Report and Recommendation (Dkt. # 67) is **accepted**.
2. Defendant is not entitled to relief on his claim of ineffective assistance of counsel for failure to file a notice of appeal as asserted in his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence.
3. Having previously denied relief on all other claims, Defendant's 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence (Dkt. # 37) is **denied** in its entirety.
4. Defendant's motion to reconsider (Dkt. # 66) the Court's prior ruling that Defendant's guilty plea was knowingly and intelligently entered is **denied**.
5. A separate judgment shall be entered in this matter.

DATED THIS 6th day of January, 2011.

A handwritten signature in black ink, reading "Terence C. Kern". The signature is fluid and cursive, with a long horizontal stroke at the end.

TERENCE C. KERN
UNITED STATES DISTRICT JUDGE